

Memo

To: **Montana Wheat & Barley Committee**

From: Terry Whiteside

Date: June 14, 2007

Re: **Transportation Report**



**CHAIRMAN OBERSTAR ANNOUNCES PREPARATION
FOR HEARINGS ON H.R.2125 IN HOUSE
TRANSPORTATION AND INFRASTRUCTURE
COMMITTEE**

Chairman Oberstar, at a Farm Forum field hearing in Minnesota Monday evening, June 4th, announced that he is beginning preparation for a hearing on rail shipper issues in his Committee, the House Transportation and Infrastructure Committee – HR 1125, Rail Competition and Service Improvement Act of 2007. His goal appears to have hearings before the August recess – while that may be an aggressive date, supporters of the bill are planning for hearings in late July, 2007. This is a mild stone – after 7 years of building shipper coalitions, the bill looks poised to get a hearing in the powerful House T&I committee as a chairman sponsored bill.

**RAIL LABOR - UTU STATE DIRECTORS LOBBY THE
HOUSE IN SUPPORT OF H.R.2125**

Early last week, a number of state directors of the UTU rail labor were in Washington and lobbied Members of the House in support of H.R.2125. This is a first for this effort, as folks who have been involved for some years will recognize. Rail labor and rail customers are standing together in support of H.R.2125 and S.953, as well as H.R.1650 and S.772, the antitrust bill, and the House rail safety legislation.

NIT LEAGUE VOTES TO CONTINUE DISCUSSIONS ABOUT THEIR PROPOSED RAIL COMPROMISE

Apparently, the 40 or so NIT League members who met in Houston on Wednesday, June 6th to take action on the proposed NIT League rail compromise plan voted to continue discussions with the railroad industry and shippers by identifying several changes that should be made to the proposed compromise. Alliance for Rail Competition EC members will be involved in the process of developing any new proposals.

NEW COSPONSORS FOR H.R.2125

The Rail Competition and Service Improvement Acts S.953 and H.R.2125 continue to gain cosponsors at a rapid pace. The House bill H.R. 2125 is up to **42** cosponsors including **3 House Committee chairman – Chairman Oberstar – House Transportation and Infrastructure Committee, Chairman Colin Peterson- House Agriculture Committee and Chairman David Obey – House Appropriations Committee.**

These Rail Competition (H.R. 2125/S 953) bills continue to gain momentum and need additional support from Agriculture in the next 40 days – thank-you all of you for your continuing efforts. While the markup is going on the Farm bill – this rail issue is also nearing hearing status and agricultural support is needed to secure passage in the House. Please continue to contact your Congressional representatives urging support and keep those letters and faxes pouring in.

PENDING LEGISLATION

Below is a list of all relevant rail customer bills and their cosponsors as of June 14, 2007, as well as the railroad investment tax credit legislation:

S. 772, Railroad Antitrust Enforcement Act of 2007 (Cosponsors: 6)

Sen. Kohl, Herb (D-WI)*
Sen. Harkin, Tom (D-IA)

Sen. Coleman, Norm (R-MN)*
Sen. Rockefeller, John D., IV (D-WV)*

Sen. Feingold, Russell D. (D-WI)*
Sen. Vitter, David (R-LA)*

S. 953, Railroad Competition and Service Improvement Act of 2007 (Cosponsors: 12)

Sen. Rockefeller, John D., IV (D-WV)*	Sen. Baucus, Max (D-MT)*	Sen. Cantwell, Maria (D-WA)*
Sen. Craig, Larry E. (R-ID)*	Sen. Crapo, Mike (R-ID)*	Sen. Dorgan, Byron L. (D-ND)*
Sen. Johnson, Tim (D-SD)	Sen. Klobuchar, Amy (D-MN)*	Sen. Landrieu, Mary L. (D-LA)
Sen. Tester, Jon (D-MT)*	Sen. Thune, John R. (R-SD)	Sen. Vitter, David (R-LA)*

H.R. 1650, Railroad Antitrust Enforcement Act of 2007 (Cosponsors: 14)

Rep. Baldwin, Tammy [D, WI-02]*	Rep. Alexander, Rodney [R, LA-05]*	Rep. Baker, Richard H. [R, LA-06]*
Rep. Berry, Marion [D, ARK-01]	Rep. Boren, Dan [D, OK-02]	Rep. Gillmor, Paul [R, OH-05]
Rep. Grijalva, Raul [D, AZ-07]	Rep. Kagen, Steve [D, WI-08]	Rep. Pomeroy, Earl [D, ND-At Large]*
Rep. Renzi, Rick [R, AZ-01]	Rep. Ross, Mike [D, AR-04]	Rep. Snyder, Vic [D, AR-02]
Rep. Walz, Timothy J. [D, MN-01]*	Rep. Wamp, Zach [R, TN-03]	

H.R. 2125, Railroad Competition and Service Improvement Act of 2007 (Cosponsors: 42)

Rep. Oberstar, James [D, MN-08]*	Rep. Alexander, Rodney [R, LA-05]*	Rep. Andrews, Robert E. [NJ-1]
Rep. Baker, Richard H. [R, LA-06]*	Rep. Baldwin, Tammy [D, WI-02]	Rep. Berry, Marion [D, AR-01]*
Rep. Boren, Dan [D, OK-02]	Rep. Boustany, Charles W. [R, LA-07]*	Rep. Cubin, Barbara [R, WY-At Large]
Rep. Franks, Trent [R, AZ-02]*	Rep. Grijalva, Raul M. [D, AZ-07]	Rep. Hare, Phil [D, IL-17]
Rep. Herseth Sandlin, Stephanie-[D, SD-At Large]*		Rep. Hinojosa, Ruben E. [D, TX-15]
Rep. Hirono, Mazie K. [D, HI-02]*	Rep. Holden, Tim [D, PA-17]	Rep. Holt, Rush D. [NJ-12]
Rep. Jefferson, William J. [D, LA-02]	Rep. Jindal, Bobby [R, LA-01]	Rep. Kagen, Steve [D, WI-08]
Rep. Kind, Ron J. [D, WI-03]*	Rep. McCollum, Betty [D, MN-04]	Rep. McNulty, Michael R. [D, NY-21]
Rep. Melancon, Charlie [D, LA-03]	Rep. Miller, Brad [NC-13]	Rep. Mollohan, Alan B. [WV-1]
Rep. Musgrave, Marilyn [R, CO-04]	Rep. Obey, David R. [D, WI-07]	Rep. Peterson, Collin [D, MN-07]
Rep. Pomeroy, Earl [ND-At Large]*	Rep. Ramstad, Jim [R, MN-03]	Rep. Rehberg, Dennis [R, MT-At Large]
Rep. Renzi, Rick [R, AZ-01]	Rep. Ross, Mike [D, AR-04]	Rep. Simpson, Mike [R, ID-02]*
Rep. Sires, Albio [D, NJ-13]	Rep. Snyder, Vic [D, AR-02]	Rep. Space, Zack [D, OH-18]
Rep. Edolphus Towns [D, NY-10]	Rep. Udall, Mark [D, CO-02]	Rep. Walz, Timothy J. [D, MN-01]*
Rep. Wamp, Zach [R, TN-03]		

S. 1125, Railroad Investment Tax Credit Legislation (Cosponsors: 14)

Sen. Lott, Trent (R-MS)*	Sen. Cochran, Thad (R-MS)*	Sen. Coleman, Norm [MN]
Sen. Conrad, Kent (D-ND)*	Sen. Crapo, Mike (R-ID)*	Sen. Graham, Lindsey O. (R-SC)*
Sen. Hagel, Chuck (R-NE)*	Sen. Isakson, Johnny (R-GA)*	Sen. Landrieu, Mary L. (D-LA)*
Sen. Nelson, Bill (D-FL)	Sen. Nelson, E. Benjamin (D-NE)*	Sen. Salazar, Ken (D-CO)
Sen. Smith, Gordon H. (R-OR)*	Sen. Stevens, Ted (R-AK)*	

H.R. 2116, Railroad Investment Tax Credit Legislation (Cosponsors: 13)

Rep. Meek, Kendrick B. [D, FL-17]*	Rep. Brady, Kevin [TX-8]	Rep. Cantor, Eric [VA-7]
Rep. Crenshaw, Ander [FL-4]	Rep. Kanjorski, Paul E. [PA-11]	Rep. LaTourette, Steven C. [OH-14]
Rep. Lewis, Ron [KY-2]	Rep. Nunes, Devin [CA-21]	Rep. Ramstad, Jim [MN-3]
Rep. Schakowsky, Janice D. [IL-9]	Rep. Shuster, Bill [PA-9]	Rep. Space, Zachary T. [OH-18]

* Original Cosponsors

FIVE MAJOR FREIGHT RAILROADS HIT WITH ANTITRUST LAWSUIT

Five major freight railroads conspired to fix prices by adding fuel surcharges, according to an antitrust lawsuit filed Monday, May 14th in U.S. District Court.

The lawsuit, which seeks class-action status, was filed by Phoenix-based **Dust Pro Inc.** on behalf of other parties who shipped goods on one or more of the railroads since July 2003.

The suit seeks unspecified monetary damages from the five railroads: CSX Transportation Inc., of Jacksonville, Fla.; Norfolk Southern Railway Co., of Norfolk, Va.; BNSF Railway Co., a subsidiary of Burlington Northern Santa Fe Corp., of Fort Worth, Texas; Union Pacific Railroad Co., of Omaha, Neb.; and Kansas City Southern Railway Co., of Kansas City.

The lawsuit alleges the five engaged in an "unreasonable restraint of trade or commerce" in violation of the Sherman Act. It said the companies control more than 90 percent of the rail freight traffic. The lawsuit charged that the railroads "moved in uniform lockstep" to fix prices for the fuel surcharges, which it said had no relationship to actual fuel costs.

As a result, the railroads "restrained competition in the market for unregulated rail freight transportation services" and "realized billions of dollars in revenues ... in excess of their actual increase in fuel costs from the specific customers on whom they imposed the surcharge."

The lawsuit cited a decision by the U.S. Surface Transportation Board, which in January banned excessive fuel surcharges by railroads and imposed strict rules on the fees that many companies had credited with bolstering profits. The STB found that the railroads had been 'double dipping' (collecting more for fuel than actual costs) and outlawed the practice by the nation's railroads but the STB did not order refunds to rail shippers that had been overcharged estimated at several billion dollars in excess fuel surcharges.

That ruling, however, applied only to rate-regulated shipping. The lawsuit said the majority of shipments are unregulated.

The suit was filed in the U.S. District Court for New Jersey.

THE FOUR MAJOR CLASS I RAILROADS ARE SPENDING BILLIONS OF DOLLARS TO BUY BACK THEIR STOCK

The Nation's railroads are doing something that appears to be duplicitous – they are spending railroad earnings buying back their own stock – millions of dollars – known as stock repurchasing plans while the capacity problems continue to grow.

This would not be newsworthy but **it comes at a time when these same Class I railroads are facing capacity shortages** on their rail systems nationwide and they are **in Congress asking for billions of dollars in investment tax credit to assist them in building infrastructure**. The nation's railroads continue to maintain that **rail customers**, including particularly those without access to competition, **must pay more if the railroads are to be financially healthy enough to remain viable and invest in their systems** all-the-while they are spending profits to repurchase stock and pleading to Congress for financial aid.

According to *Escalation Consultants*, the four major Class I railroads in the first quarter of 2007 have chosen to invest their capital (often cash, but sometimes debt) in the following ways:

	<u>Capital Invested</u>	<u>Stock Repurchase</u>	<u>Stock Repurchases as a Percent of Capital Investment</u>
BNSF	\$537 million	\$349 million	65%
UP	\$877 million	\$197 million	22%
CSX	\$402 million	\$179 million	45%
NS	\$256 million	\$276 million	108%

Source: "Rail Price Advisor", 2d Qtr. 2007
Volume 16, Number 2, page 1

The Big 4, BNSF – UP – CSX – and NS have embarked on multi-year programs to buy back millions of shares worth multi-millions of dollars over the next 2-5 years.

- UP 1/3/07 – 20 million share buyback program
- BNSF 2/14/07 (Valentine's Day) – 30 million share buyback program
- CSX – 03/27/07 – expanded its buyback program to 75 million shares
- NS – 05/08/07 – announced a \$3 Billion (up from \$2 billion) buyback program